Armored Transport of California, Inc. *and* Leo Landerway, Jr. and/or Lou Cotarelo, Jr., Petitioners. Case 21-RC-17263

30 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

Upon a petition for certification of representative filed by Leo Landerway, Jr. and/or Lou Cotarelo, Jr. 11 August 1983, a hearing was held 25 August 1983 before Hearing Officer Roberto G. Chavarry. On 25 August 1983, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statement of Procedure, the Regional Director for Region 21 transferred this case to the Board for decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error.

The Board has considered the entire record in this case and for the following reasons finds that the Petitioners are not qualified for certification as provided in Section 9(b)(3) of the Act.

The Petitioners seek to represent the following unit:

> All employees covered by the recently expired Collective Bargaining Agreement between Teamsters Local 542 and the Employer; excluding all other employees, office clerical employees, and supervisors as defined in the Act.

The parties stipulated that the unit the Petitioners seek is appropriate. The question to be resolved is whether the Petitioners are at least indirectly affiliated with a labor organization that admits to membership employees other than guards and are, therefore, not qualified for certification as provided in Section 9(b)(3) of the Act.

The record shows that Teamsters Local 542 represented the unit employees for many years and that the last collective-bargaining agreement between it and the Employer expired 30 June 1983. On 13 July 1983 the Union filed an unfair labor practice charge against the Employer in Case 21-CA-22408, alleging that the Employer violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union. On 3 August 1983 the Regional Director for Region 21 dismissed the charge on the ground that the employees in question were "guards" within the meaning of 9(b)(3) of the Act. The Petitioners filed the instant petition 11 August 1983.

Petitioners Landerway and Cotarelo are full-time representatives of Local 542 who negotiate and administer collective-bargaining agreements on the Union's behalf throughout the County of San Diego, California. The Petitioner's attorney, Richard D. Prochazka, testified that the Union has given the Petitioners permission to represent the unit employees during their free time apart from their official duties as Local 542 representatives. Both Landerway and Cotarelo plan to continue in their full-time jobs with Local 542 if they are certified as the unit employees' representative. Prochazka testified that the Petitioners will receive no remuneration for representing the employees and that the employees will not be required to pay dues. Prochazka testified that the Petitioners have not decided how they would pay for any arbitrations that may arise should they be certified as the collective-bargaining representative. Prochazka further testified that the Petitioners would not seek Local 542's permission as to the terms and conditions to be negotiated with the Employer. Finally, Prochazka testified that the Petitioners are individuals, not a labor organization, and argues that the language of Section 9(b)(3) which states that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards" does not apply to individuals.

The Employer contends that as business agents for Local 542 the Petitioners have not shown that they will be sufficiently independent of that Union to overcome the prohibition of Section 9(b)(3). We agree. In *Wackenhut Corp.*, 223 NLRB 1131, 1132 (1976), the Board found evidence of an affiliated relationship where officials of a nonguard union held principal offices in the petitioning guard union. The Board concluded that the petitioner's dependence upon the nonguard union and its officials indicated "a lack of freedom and independence in formulating its own policies and deciding its own course of action," and dismissed the petition.

As we stated in *Mack Mfg. Corp.*, 107 NLRB 209, 212 (1953), "Congress clearly intended by Section 9(b)(3) that the union representing guards should be completely divorced from that representing nonguard employees." This mandate applies whether the representative is a labor organization or an individual.[1] We find based on the entire

[1] Cf. *Penn-Keystone Realty Corp.*, 191 NLRB 800, 801 (1971) (individual who files petition may be certified as representative).

record, particularly the Petitioners' employment as full-time Teamsters business agents, that they are at least indirectly affiliated with that Union. Accordingly, we cannot find that separation which Congress mandated between the nonguard union and the Petitioners. Therefore, we shall dismiss the petition.[2]

ORDER

The petition is dismissed.

[2] We find it unnecessary to pass on the Employer's alternative argument that the petition is defective because it describes the petitioning individuals as "and/or."